

117TH CONGRESS
1ST SESSION

H. R. 5873

To amend the Employee Retirement Income Security Act of 1974 to improve part-time coverage for part-time workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2021

Ms. MANNING introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 to improve part-time coverage for part-time workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving Part-Time
5 Workers Access to Retirement Act of 2021”.

1 **SEC. 2. IMPROVING PART-TIME COVERAGE FOR PART-TIME**
2 **WORKERS.**

3 (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-
4 COME SECURITY ACT OF 1974.—

5 (1) IN GENERAL.—Section 202 of the Employee
6 Retirement Income Security Act of 1974 (29 U.S.C.
7 1052) is amended by adding at the end the following
8 new subsection:

9 “(c) SPECIAL RULE FOR CERTAIN PART-TIME EM-
10 PLOYEES.—

11 “(1) IN GENERAL.—A pension plan that in-
12 cludes either a qualified cash or deferred arrange-
13 ment (as defined in section 401(k) of the Internal
14 Revenue Code of 1986) or a salary reduction agree-
15 ment (as described in section 403(b) of such Code)
16 shall not require, as a condition of participation in
17 the arrangement or agreement, that an employee
18 complete a period of service with the employer (or
19 employers) maintaining the plan extending beyond
20 the close of the earlier of—

21 “(A) the period permitted under subsection
22 (a)(1) (determined without regard to subpara-
23 graph (B)(i) thereof); or

24 “(B) the first 24-month period—

25 “(i) consisting of 2 consecutive 12-
26 month periods during each of which the

1 employee has at least 500 hours of service;
2 and

3 “(ii) by the close of which the em-
4 ployee has attained the age of 21.

5 “(2) EXCEPTION.—Paragraph (1)(B) shall not
6 apply to any employee described in section 410(b)(3)
7 of the Internal Revenue Code of 1986.

8 “(3) COORDINATION WITH OTHER RULES.—

9 “(A) IN GENERAL.—In the case of employ-
10 ees who are eligible to participate in the ar-
11 rangement or agreement solely by reason of
12 paragraph (1)(B):

13 “(i) EXCLUSIONS.—An employer may
14 elect to exclude such employees from the
15 application of subsections (a)(4), (k)(3),
16 (k)(12), (k)(13), (k)(15)(B)(i)(I), and
17 (m)(2) of section 401 of such Code and
18 section 410(b) of such Code.

19 “(ii) TIME OF PARTICIPATION.—The
20 rules of subsection (a)(4) shall apply to
21 such employees.

22 “(B) TOP-HEAVY RULES.—An employer
23 may elect to exclude all employees who are eligi-
24 ble to participate in a plan maintained by the
25 employer solely by reason of paragraph (1)(B)

1 from the application of the vesting and benefit
2 requirements under subsections (b) and (c) of
3 section 416 of such Code.

4 “(4) 12-MONTH PERIOD.—For purposes of this
5 subsection, 12-month periods shall be determined in
6 the same manner as under the last sentence of sub-
7 section (a)(3)(A), except that 12-month periods be-
8 ginning before January 1, 2021, shall not be taken
9 into account.”

10 (2) VESTING.—Section 203(b) of the Employee
11 Retirement Income Security Act of 1974 (29 U.S.C.
12 1053(a)) is amended by redesignating paragraph (4)
13 as paragraph (5) and by inserting after paragraph
14 (3) the following new paragraph:

15 “(4) PART-TIME EMPLOYEES.—For purposes of
16 determining whether an employee who is eligible to
17 participate in a qualified cash or deferred arrange-
18 ment or a salary reduction agreement under a plan
19 solely by reason of section 202(c)(1)(B) has a non-
20 forfeitable right to employer contributions—

21 “(A) except as provided in subparagraph
22 (B), each 12-month period for which the em-
23 ployee has at least 500 hours of service shall be
24 treated as a year of service;

1 “(B) paragraph (3) shall be applied by
2 substituting ‘at least 500 hours of service’ for
3 ‘more than 500 hours of service’ in subpara-
4 graph (A) thereof; and

5 “(C) 12-month periods occurring before
6 the 24-month period described in section
7 202(c)(1)(B) shall not be treated as years of
8 service.

9 For purposes of this paragraph, 12-month periods
10 shall be determined in the same manner as under
11 the last sentence of section 202(a)(3)(A), except that
12 12-month periods beginning before January 1, 2021,
13 shall not be taken into account.”.

14 (3) PRE-2021 SERVICE.—Section 112(b) of the
15 Setting Every Community Up for Retirement En-
16 hancement Act of 2019 (26 U.S.C. 401 note) is
17 amended by striking “section 401(k)(2)(D)(ii)” and
18 inserting “paragraphs (2)(D)(ii) and (15)(B)(iii) of
19 section 401(k)”.

20 (b) CONFORMING AMENDMENTS TO INTERNAL REV-
21 ENUE CODE OF 1986.—

22 (1) IN GENERAL.—Section 410(a) of the Inter-
23 nal Revenue Code of 1986 is amended by adding at
24 the end the following new paragraphs:

1 “(6) SPECIAL RULE FOR CERTAIN PART-TIME
2 EMPLOYEES.—

3 “(A) IN GENERAL.—In the case of a plan
4 that includes either a qualified cash or deferred
5 arrangement (as defined in section 401(k)) a
6 trust of which such plan is a part shall not con-
7 stitute a qualified trust under section 401(a) if
8 the plan requires, as a condition of participa-
9 tion in the plan or arrangement, that an em-
10 ployee complete a period of service with the em-
11 ployer (or employers) maintaining the plan ex-
12 tending beyond the close of the earlier of—

13 “(i) the period permitted under para-
14 graph (1) (determined without regard to
15 subparagraph (B)(i) thereof), or

16 “(ii) the first 24-month period—

17 “(I) consisting of 2 consecutive
18 12-month periods during each of
19 which the employee has at least 500
20 hours of service, and

21 “(II) by the close of which the
22 employee has attained the age of 21.

23 “(B) EXCEPTION.—Subparagraph (A)(ii)
24 shall not apply to any employee described in
25 section 410(b)(3).

1 “(C) COORDINATION WITH OTHER
2 RULES.—

3 “(i) IN GENERAL.—In the case of em-
4 ployees who are eligible to participate in
5 the arrangement or agreement solely by
6 reason of subparagraph (A)(ii)—

7 “(I) EXCLUSIONS.—An employer
8 may elect to exclude such employees
9 from the application of subsection (b)
10 and of subsections (a)(4), (k)(3),
11 (k)(12), (k)(13), (k)(15)(B)(i)(I), and
12 (m)(2) of section 401.

13 “(II) TIME OF PARTICIPATION.—
14 The rules of paragraph (4) shall apply
15 to such employees.

16 “(ii) TOP-HEAVY RULES.—An em-
17 ployer may elect to exclude all employees
18 who are eligible to participate in a plan
19 maintained by the employer solely by rea-
20 son of subparagraph (A)(ii) from the appli-
21 cation of the vesting and benefit require-
22 ments under subsections (b) and (c) of sec-
23 tion 416.

24 “(D) 12-MONTH PERIOD.—For purposes of
25 this paragraph, 12-month periods shall be de-

1 terminated in the same manner as under the last
2 sentence of paragraph (3)(A), except that 12-
3 month periods beginning before January 1,
4 2021, shall not be taken into account.”.

5 (2) VESTING.—Section 410(a) of the Internal
6 Revenue Code of 1986 is amended by adding at the
7 end the following:

8 “(6) PART-TIME EMPLOYEES.—For purposes of
9 determining whether an employee who is eligible to
10 participate in a qualified cash or deferred arrange-
11 ment or a salary reduction agreement under a plan
12 solely by reason of paragraph (6)(A)(ii) has a non-
13 forfeitable right to employer contributions—

14 “(A) except as provided in subparagraph
15 (B), each 12-month period for which the em-
16 ployee has at least 500 hours of service shall be
17 treated as a year of service,

18 “(B) section 411(a)(6) shall be applied by
19 substituting ‘at least 500 hours of service’ for
20 ‘more than 500 hours of service’ in subpara-
21 graph (A) thereof, and

22 “(C) 12-month periods occurring before
23 the 24-month period described in paragraph
24 (6)(A)(ii) shall not be treated as years of serv-
25 ice.

1 For purposes of this paragraph, 12-month periods
2 shall be determined in the same manner as under
3 paragraph (6)(D).”.

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